

Entered -6-12-00 - sb
CL 00L0340 - GWENDOLYN BURNS

01- R-0136

CLAIM OF:

DR. JAMES C. KINCAID
through his attorney,
Henry D. Fellows, Jr., Esq.
FELLOWS JOHNSON & LA BRIOLA, LLP
Peachtree Center
Suite 2300 South Tower
225 Peachtree Street, NE
Atlanta, Georgia 30303-1731

For property damages alleged to have been sustained from a sewer
back up on February 17, 2000 at 3580 Piedmont Road, NE.

**THIS ADVERSED REPORT IS
APPROVED**

BY: _____


ROBERT N. GODFREY
DEPUTY CITY ATTORNEY

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 00L0340

Date: January 19, 2001

Claimant /Victim DR. JAMES C. KINCAID
BY: (Atty) (Ins. Co.) Henry D. Fellows, Jr., Esq., FELLOWS JOHNSON & LA BRIOLA, LLP
Address: Peachtree Center, Suite 2300 South Tower, 225 Peachtree Street, NE, Atlanta, Georgia 30303-1731
Subrogation: Claim for Property damage \$ 111,399.00 Bodily Injury \$
Date of Notice: 8/1/00 Method: Written, Proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 Ante Litem (6 Mo.)
Date of Occurrence 2/17/00 Place: 3580 Piedmont Road, NE
Department PUBLIC WORKS Division Sewer Operations
Employee involved Disciplinary Action:

NATURE OF CLAIM: Claimant alleges that his business sustained damages from a sewer back up. An investigation determined that the City responded to and resolved the back up in a timely manner. It further showed that the main line was cleared, the system flowed well and there was nothing found in the line that could have caused or encouraged a grease blockage. More importantly, the investigation showed that the grease blockage resulted from grease entering the system from the restaurants up stream on Roswell Road, NE, which is a violation of the City's grease ordinance (Atlanta City Code § 154-297). Moreover, the operation of the City sewer system is a government function and the City is immune from liability as set forth in O.C.G.A. § 36-33-1.


INVESTIGATION:

Statements: City employee X Claimant Others Written Oral X
Pictures Diagrams Reports: Police Dept Report X Other X
Traffic citations issued: City Driver Claimant Driver
Citation disposition: City Driver Claimant Driver

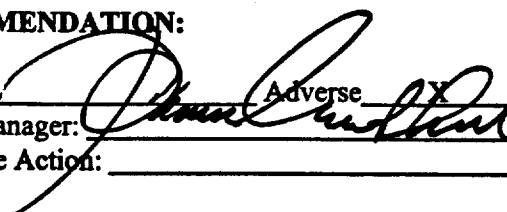
BASIS OF RECOMMENDATION:

Function: Governmental X Ministerial
Improper Notice More than Six Months Other X Damages reasonable
City not involved Offer rejected Compromise settlement
Repair/replacement by Ins. Co. Repair/replacement by City Forces
Claimant Negligent City Negligent Joint Claim Abandoned

Respectfully submitted,


INVESTIGATOR GWENDOLYN BURNS

RECOMMENDATION:

Pay \$ Adverse X Account charged: 1A01 2J01 2H01
Claims Manager:  Concur/date 01-19-01
Committee Action: Council Action

Quanne
cc: *Sally*

FELLOWS JOHNSON & LA BRIOLA, LLP

BURNS
06/06/00
Ch

Peachtree Center
Suite 2300 South Tower
225 Peachtree Street, N.E.
Atlanta, Georgia 30303-1731

Henry D. Fellows, Jr.
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Telephone (404) 586-9200
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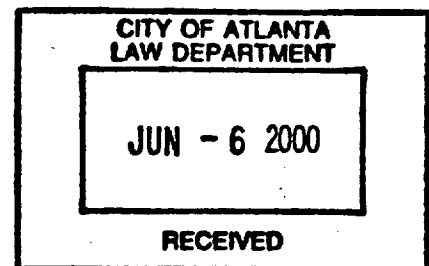
Writer's Direct Dial Number
(404) 586-2050

ENTERED - 6-12-00 - SB
June 5, 2000 00L0340 - GWEN BURNS

Mr. Bill Campbell
Mayor of the City of Atlanta
55 Trinity Avenue, Suite 2400
Atlanta, Georgia 30335

Mr. Robb Pitts
President
Atlanta City Council
55 Trinity Avenue, S.W., Suite 2900
Atlanta, GA 30335

Mr. David Peters
Department of Public Works
City Hall
55 Trinity Street
Atlanta, Georgia 30335



Re: Ante Litem Notice of a Claim on Behalf of Dr. James Kincaid and Tuxedo Center, 3580 Piedmont Road, N.E., Atlanta, Georgia 30305

Dear Gentlemen:

We contact you on behalf of our client, Dr. James Kincaid, owner of Tuxedo Center, and his tenants, to advise the City of Atlanta and the Atlanta Department of Public Works of claims Dr. Kincaid and his tenants intend to file against both entities. Tuxedo Center is located at 3580 Piedmont Road, N.E., Atlanta, Georgia. This letter is intended to serve as the Ante Litem Notice of the claims of both Dr. Kincaid and the tenants of Tuxedo Center in accordance with O.C.G.A. § 36-33-5(b) as well as a demand for damages based on the conduct described below.

The claims of Dr. Kincaid and the tenants of Tuxedo Center against the City of Atlanta and the Atlanta Department of Public Works are based on an incident which occurred on February 17, 2000, involving a sewer back-up which resulted in raw sewage entering and partially flooding the ground floor of Tuxedo Center, located at 3580 Piedmont Road, N.E., Atlanta, Georgia. Tuxedo Center is a professional office

Mr. Bill Campell
• Mr. Robb Pitts
Mr. David Peters
June 5, 2000
Page 3 of 3

of-pocket expenses and damages currently exceed \$111,000 and our clients will have additional claims for lost revenues and profits due to lost professional time associated with the past, present, and future treatment of patients.

The claims of Dr. Kincaid and of the tenants of Tuxedo Center against the city include, but are not limited, to negligence based on the failure of the city to properly maintain the sewer system and the failure of the city to timely respond to the complaints made by Ms. Giarrusso. This notice letter represents the demand of both Dr. Kincaid and his tenants for damages to the City of Atlanta and the Atlanta Department of Public Works for the injuries he and his tenants suffered as a result of the Department of Public Work's negligence.

Please notify us whether the City desires to enter into good faith settlement discussions prior to our initiation of a lawsuit.

Sincerely,



Henry D. Fellows, Jr.
FOR THE FIRM

Enclosure

cc: Ms. Susan Pease Langford (with enclosure)
City Attorney
68 Mitchell Street, Suite 4100

Mr. Bill Campell
Mr. Robb Pitts
Mr. David Peters
June 5, 2000
Page 2 of 4

building, which contains approximately eight (8) suites. The suites within Tuxedo Center contain the dental practices of approximately ten (10) dentists.

On February 17, 2000, at approximately 7:45 a.m., Cathy Giarrusso, Dr. Kincaid's Office Manager contacted the dispatcher for the James Walker Construction and Maintenance Sewer Facility and advised the dispatcher that the sewer was backing up into the building at 3580 Piedmont Road, N.E. and that immediate assistance was required. After receiving no response to her initial telephone call, Ms. Giarrusso made several telephone calls to the city to advise them of the severity of the problem. Eventually, Ms. Giarrusso left a voicemail message for the supervisor of the department requesting assistance.

Aretha Booker, a representative from the James Walker Construction and Maintenance Sewer Facility, finally arrived to investigate Ms. Giarrusso's complaint at approximately 12:30 p.m. Alvester Williams, Ms. Booker's Crew Supervisor, later advised us that the back-up and subsequent flooding was caused by a grease blockage that had formed in the city's sewer line. Mr. Williams has further advised that he is familiar with the claim and that he reviewed his report on the incident to confirm that the cause of back-up was a grease blockage in the city's sewer line. Mr. Williams, himself, was a witness to the extent of the damages done and the attempts of the building's tenants to mitigate the amount of property damaged by the flood of raw sewage into the building.

At approximately, 11:00 a.m. the sewer system backed-up into the plumbing on the ground floor of Tuxedo Center. When the sewage backed-up into Tuxedo Center, it entered the plumbing with a substantial amount of pressure and was forced out nearly every drain opening on the ground floor. The sewage was quickly ankle deep in Suite 120 and the private office contained therein. In suites 107 and 113, the sewage was even forced into dental equipment. Patients in the middle of treatment, had to be dismissed. The sight and odor were overwhelming. Many of the building's occupants, including several of the dentists were forced to abandon their work projects in order to assist in diverting the flow of the sewage in an effort to mitigate the damage caused by the back-up and ensuing flood.

The sewage continued to flow into the drain openings on the ground floor for approximately two hours, with sewage being tracked over most of the carpet on the ground floor. Dr. Kincaid's contractor, Davie Rogers, was finally able to divert the sewage into a basement crawl space by opening a clean-out plug. The sewage then continued to drain into the crawl space for approximately another hour before the blockage was cleared.

As a result of the sewer backing-up into Tuxedo Center, a substantial amount of damage was done to property contained therein. Attached hereto as Exhibit "A," please find a copy of the claim form, and attached damage documentation, filed by our firm on behalf of Dr. James Kincaid and the tenants of Tuxedo Center, on June 2, 2000. The out-